

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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December 29, 2006

Memo To Counsel Re: Kristen M. Harkum, v. United States of America
Civil No. JFM-05-935

Dear Counsel:

I have reviewed the memoranda submitted in connection with the United States' motion to dismiss or for summary judgment. The motion will be treated as one for summary judgment and will be granted as to counts I and II. The motion is denied as to counts III, IV, V, and VI.

In order to keep this case on track, it is important that I rule upon the pending motion promptly. My schedule does not permit me to write an extended opinion. In any event, this is a case in which I believe the issues raised by the motion are clear cut, and no extended opinion is necessary.

As to counts I and II in which plaintiff asserts claims for negligence in regard to the planning of the arrest of Joseph Schultz, the discretionary function exception to the waiver of sovereign immunity contained in the Federal Tort Claims Act applies. As to counts III, IV, V, and VI, the United States does not contend that the discretionary function exception does apply. Rather, the only issue raised by the United States' motion as to those counts is whether a reasonable fact finder could find that Agent Braga acted recklessly or with gross negligence when he shot Schultz in the immediate presence of plaintiff. *See Maryland Code, State Government Article, §12-105, and Courts & Jud. Proc. Art., §5-522.* In accordance with my prior rulings in this case, I find that the evidence does give rise to a reasonable inference that Agent Braga did act recklessly or with gross negligence.¹

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

¹My ruling in favor of Agent Braga against plaintiff on her *Bivens* claim was based not upon an absence of gross negligence or recklessness on his part but upon the fact that Agent Braga did not intend to shoot plaintiff and, in fact, did not do so. It was on this basis that the Fourth Circuit affirmed my ruling. *See Schultz v. Braga*, 455 F.3d 470, 481-83 (4th Cir. 2006). This fact is not dispositive of any of the state common law claims asserted by plaintiff in counts III, IV, V, and VI.

/s/

J. Frederick Motz
United States District Judge